
From: Nelson, Chris
Sent: Monday, February 09, 2015 1:37 PM
To: 'Jim Schmidt'
Cc: Van Gerpen, Patty
Subject: RE: Dakota Access

Commissioner Schmidt,

Thank you for your email. Allow me to explain why I can't visit with you – or anyone – regarding the Dakota Access Pipeline outside of the public process. SDCL 1-26-26 absolutely prohibits me from discussing the docket with anyone “except upon notice and opportunity for all parties to participate”. This is why we stressed at the public input hearings that any communication with the Commission regarding this docket had to be in writing. Many have availed themselves of that option and I anticipate many more will. The full statute is as follows:

“Unless required for the disposition of ex parte matters authorized by law, members of the governing board or officers or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. If one or more members of a board or commission or a member or employee of an agency, who is assigned to render a decision in a contested case, took part in an investigation upon which the contested case is based, he shall not participate in the conduct of the hearing nor take part in rendering the decision thereon, but he may appear as a witness and give advice as to procedure. If, because of such disqualification, there is no person assigned to conduct the hearing or render the decision, the agency shall appoint someone pursuant to § 1-26-18.1 to fulfill those duties. A person assigned to render a decision:

- (1) May communicate with other members of the agency; and
- (2) May have the aid and advice of one or more personal assistants.”

This is NOT a “done deal”. We are at the very beginning of the process. Friday is the deadline for individuals and organizations to request party status in the docket. Many are filing for such status. As such we don't even know today who all the “players” are in this docket, let alone this being a “done deal”. Once we know who the parties are in the docket, there will be a conference of all the parties to determine a procedural schedule for discovery, testimony, and hearings. Again, we are very early in this process.

Lincoln County has requested party status. The PUC will rule on that request during our regular meeting at 9:30am on February 13. If the county is granted party status, the county will be able to fully participate in this process as it plays out over the next ten months.

Regarding the Dakota Air issue, any electric generation facility in excess of 100 MW requires a siting permit from the PUC, much like the permit Dakota Access is requesting. Again because of the 1-26-26 prohibitions, I can't visit with you regarding Dakota Air either.

Jim, you know me well enough to know that I am always open in my dealings with the public. SDCL 1-26-26 doesn't allow me to have conversations that I would love to have – until we do it in a public forum. That said, you need questions answered. You are free to visit with commission staff regarding your questions. Kristen Edwards, Brian Rounds, or Darren Kearney are the staff assigned to the Dakota Access docket. They can also answer any questions regarding a potential wind farm. I would encourage you contact them to set up a meeting or visit over the phone.

Your message will be posted in the South Dakota Public Utilities Commission's formal pipeline siting docket, HP14-002, under Comments and Responses. Since this is an open docket before the commission, any correspondence involving a commissioner must be posted in the open, public docket so that other commissioners and all parties to the case have access to it.

Sincerely,

Chris Nelson

Public Utilities Commissioner

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